

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

Case No. 9:03-bk-26514-ALP
Chapter 11 Case

JET 1 CENTER, INC.,

Debtor. /

JET 1 CENTER, INC., a Florida
Corporation

Plaintiff/Counter-defendant

v. Adv. No. 04-110

CITY OF NAPLES AIRPORT
AUTHORITY

Defendant/Counter-plaintiff
And Third-Party Plaintiff

v.

JET 1 CENTER, INC., et al.

Counter-defendant and
Third-Party Defendants

**ORDER ON DEBTOR'S EMERGENCY
MOTION FOR STAY PENDING APPEAL OF
THIS COURT'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
MEMORANDUM OPINION AND ORDER
DATED AUGUST 26, 2005 AND FINAL
JUDGMENT DATED SEPTEMBER 14, 2005**

(Doc. No. 199)

THE MATTER under consideration in the above captioned adversary proceeding in this Chapter 11 case of Jet 1 Center, Inc. (Debtor) is Debtor's Emergency Motion for Stay Pending Appeal of this Court's Findings of Fact, Conclusions of Law and Memorandum Opinion and Order dated August 26, 2005, and Final Judgment dated September 14, 2005 (Doc. No. 199) (the Motion for Stay Pending Appeal). The Motion for Stay Pending Appeal is directed at the effectiveness of the Final Judgment entered by this Court on September 14, 2005 in the above-captioned adversary proceeding.

The Debtor seeks an order from this Court staying the effect of the Final Judgment pending an appeal, pursuant to Federal Rule of Bankruptcy Procedure 8005. One of the provisions of the Final Judgment requires the Debtor to vacate the premises. The Debtor contends that this Court lacks authority to order eviction and enforce an eviction, citing In re Brickyard, Inc., 36 B.R. 569 (Bankr. S.D. Fla. 1983). The Debtor argues that if this Court is correct and the lease is no longer the property of the estate, then this Court has no jurisdiction over the rights to occupy the premises and the eviction is governed by local law, under which only the county court has jurisdiction under state landlord-tenant law. In any event, if eviction is ordered by the county court, the tenant is a tenant of sufferance and must be granted fifteen days to vacate the premises.

First, it should be pointed out that the issue of eviction in the claim asserted in the state court was removed from the state court to this Court by the Debtor and it ill-behooves the Debtor to now state that this Court lacks jurisdiction over the issue of eviction.

Second, this Court is satisfied that the decision of Judge Gassen in Brickyard furnished scant, if any, authority to support the proposition that the county court has exclusive jurisdiction, vis-à-vis this Court, to rule on the eviction and evict the Debtor. The facts situation involved in Brickyard bears no resemblance whatsoever with the facts involved in this case. This Court is satisfied that it has jurisdiction to enforce its own orders and final judgment, and not to force the prevailing party to go to a different forum and seek enforcement of a final judgment of this Court.

The Debtor also argues that this Court should stay the enforcement of the Final Judgment because, based on the record consisting of testimony and documentary evidence presented, the four factors this Court must consider in deciding to grant a motion to stay pending appeal have been met. "These factors are (1) whether the movant has made a showing of likelihood of success on the merits, (2) whether the movant has made a showing of irreparable injury if the stay is not granted, (3) whether the granting of the stay would substantially harm the other parties, and (4) whether the granting of the stay would serve the public interest." Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir. Unit A June 1981). See also In re Section 20 Land Group, Ltd., 252 B.R. 819 (Bankr. M.D. Fla. 2000).

In regards to the first factor, the Debtor argues that it has shown a likelihood of success on the merits. The argument is based on the contention that this Court erred in its conclusion that the lease in question was terminated. The Debtor argues that this Court confused the defaults alleged two letters sent by the Authority to the Debtor, one on August 15, 2002, the other on November 13, 2002 letter. The Debtor contends that the November 13, 2002 letter did not contain a termination under the basis of the alleged breaches of the lease which were the subject of the August letter. Based on this the Debtor argues that this Court erred in relying on the November letter for termination and the Debtor never had the opportunity in the preceding state court litigation or in this Court to defend against the charges set forth in the August letter.

The Debtor in effect asks this Court to reconsider its ruling. Determining whether the Debtor would ultimately prevail on appeal is beyond the scope of this Court's powers; however, this Court is satisfied that, based on the Findings of Fact and the Conclusions of Law already issued in this proceeding, the Debtor has not shown a likelihood of success on the merits.

The second factor considered by this Court is irreparable injury to the movant if the stay is not granted. The irreparable injury alleged by the Debtor is that the Debtor will be put out of business, which will result in the Debtor's employees losing their jobs, as well as the Debtor losing its investments in the business.

As to the former injury, while this Court is not indifferent to the effects of its orders, based on the record developed at the hearing to consider the Motion for Stay Pending Appeal, there is little evidence that the employees of the Debtor will be irreparably injured. As to the latter injury, it should be pointed out that the Debtor could never have permanently retained its investment in the facilities. The hangers constructed at great cost, which are the primary facilities of the Debtor, would have been forfeited eventually, due to a specific provision of the lease that upon termination the structure, in this case, the hanger and office facility, will become property of the Authority and the Debtor forfeits its rights to the improvements to the land leased from the Authority.

Moreover, the posited irreparable injury to the Debtor if the stay is not granted is countered by

the substantial harm the Authority will likely suffer, particularly the loss of revenue which the Authority may realize upon reletting the premises when it is able to regain possession. The evidence presented in support of and in opposition to the second and third factors in considering the Motion for Stay Pending Appeal, irreparable injury to the movant and substantial harm to the other party is an equal balance. As both factors weigh equally, this Court is satisfied that the Debtor, as movant, has failed to carry its burden to establish to these two elements, as required to obtain a stay pending appeal.

Concerning the fourth requirement, whether granting the stay would serve the public interest, it cannot be gainsaid that there is nothing in this record to warrant the conclusion that the continuation of the fixed based operation by the Debtor would be in the public interest. This is so because if the Debtor is evicted the Authority would be in the position and willing to take over the operation. The Authority by taking over the operation could increase its revenues and, unlike the current amount it receives, which is approximately \$38,000 per month, could be able to generate gross revenues of \$200,000, less the projected operating cost of \$80,000, leaving \$120,000 net monthly revenues.

It is evident from the foregoing that it is in the public interest to preserve the financial health of the Authority, as it is required to continue to operate the airport without the contribution of any governmental subsidy or federal tax revenues for the operation of the facility. Based on the foregoing this Court is satisfied that the Debtor failed to establish requisite proof of the four factors outlined above as required by the law, and therefore his Motion for Stay Pending Appeal should be denied.

However, notwithstanding the foregoing, this Court is also satisfied that a temporary stay should be granted, giving the Debtor a ten day opportunity to seek a stay pending appeal from the district court and until the district court enters its ruling, if the motion is filed. However, in the event the motion is not filed, the Debtor shall vacate the premises within twenty days from the expiration of the ten days granted to seek a stay pending appeal from the district court.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Debtor's Emergency Motion for Stay Pending Appeal of this Court's Findings of Fact, Conclusions of Law and Memorandum Opinion and Order dated August 26, 2005, and Final Judgment dated September 14, 2005 be, and the same is hereby, denied without prejudice subject to the conditions outlined above. It is further

ORDERED, ADJUDGED AND DECREED that the effect of the Final Judgment be, and the same is hereby, stayed for ten (10) days. If the Debtor seeks a stay pending appeal from the district court, the stay shall continue until the district court enters a decision. If the Debtor does not seek a stay pending appeal, it shall vacate the premises within twenty (20) days after the expiration of the initial ten (10) day stay.

DONE AND ORDERED at Tampa, Florida,
on October 26, 2005.

/s/ Alexander L. Paskay
ALEXANDER L. PASKAY
United States Bankruptcy Judge